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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

**CELA  
SENSITIVE**

MUR: 6443

DATE COMPLAINT FILED: December 15, 2010

DATE OF NOTIFICATION: December 21, 2010

DATE OF LAST RESPONSE: March 8, 2011

DATE ACTIVATED: April 1, 2011

EXPIRATION OF SOL: Earliest: 9/4/2015

Latest: 10/27/2015

**COMPLAINANT:** Democratic Congressional Campaign Committee

**RESPONDENT:** Americans for Common Sense Solutions

**RELEVANT STATUTES  
AND REGULATIONS:** 2 U.S.C. § 434(f)  
2 U.S.C. § 441d  
11 C.F.R. § 104.20  
11 C.F.R. § 110.11  
11 C.F.R. § 111.44

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**OTHER AGENCIES CHECKED:** Internal Revenue Service

**I. INTRODUCTION**

The complaint in this matter alleges that Americans for Common Sense Solutions ("ACSS" or "Respondent") funded television and radio advertisements attacking David Cicilline, a candidate for Rhode Island's 1<sup>st</sup> Congressional District, and distributed them in the district within 60 days of the 2010 general election, but failed to file electioneering communications notices, as required by 2 U.S.C. § 434(f). Complaint at 1. The complaint included a copy of a television advertisement and a radio advertisement funded by ACSS, but included no further information regarding the distribution or broadcast of the advertisements in question.

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As discussed below, we recommend that the Commission find reason to believe that Americans for Common Sense Solutions violated 2 U.S.C. §§ 434(f) and 441d by failing to timely file notices of five electioneering communications and by failing to include adequate disclaimers in those communications.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Factual Summary**

ACSS is an unincorporated association registered with the Internal Revenue Service ("IRS") as a Section 527 political organization. See IRS Charities and Non-Profits Database, <http://forms.irs.gov/politicalOrgsSearch>. In 2010, ACSS funded two television ads and one radio ad that "raise questions about the policy preferences and legislative records of David Cicilline." Response at 1. The television ads were disseminated on October 8, 2010, and October 26, 2010, and the radio ad was disseminated on October 21, 2010, all within 60 days before the November 2, 2010 general election. In addition, in its response to the complaint ACSS acknowledges that it funded two television advertisements regarding Lois Capps, a candidate for California's 23<sup>rd</sup> Congressional District. *Id.* Those ads were disseminated on September 3, 2010, and October 21, 2010, also within 60 days before the November 2, 2010 general election. See Attachment 1, Transcripts of Advertisements.<sup>1</sup> All of the advertisements include an audio statement declaring that ACSS is responsible for the content of the advertisements. The television advertisements also include a written statement that the

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<sup>1</sup> We have attached transcripts for the advertisements related to Cicilline (two were included as an exhibit with the complaint and one was posted on Respondent's Facebook page) and the advertisements related to Capps (both transcribed from the advertisements posted on the Respondent's Facebook page). See <http://www.facebook.com/?sk=lf#!/pages/Americans-for-Common-Sense-Solutions/127124587335216?sk=wall>. (Last viewed June 15, 2011).

1 advertisements are not authorized by any candidate or candidate's committee, and include the  
2 World Wide Web address for ACSS.

3 ACSS admits that it did not file electioneering communication notices with the  
4 Commission disclosing these communications, but claims that its failure to file the notices was  
5 inadvertent, and that after it received notification of the complaint, it reviewed its activities and  
6 filed the necessary electioneering communication notices. *Id.* It emphasized that even though  
7 the complaint addressed only those communications associated with Cicilline, it was self-  
8 disclosing the Capps electioneering communications as well. *Id.* ACSS states that it had not  
9 previously produced or distributed electioneering communications and states that the  
10 electioneering reporting requirement is "not easy to find" and is "imprecise and unclear."  
11 Response at 2. Respondent asserts that "if one cannot find those [reporting] requirements, their  
12 supposed simplicity is a moot point." *Id.*

13 In its response, Respondent also acknowledges that the disclaimers in its electioneering  
14 communications were not compliant with 2 U.S.C. § 441d.<sup>2</sup> March 10, 2011 Supplemental  
15 Response at 1. Finally, Respondent requests that this matter be dismissed because all reports  
16 have now been filed. In the alternative, Respondent declares its willingness to conciliate or  
17 settle this matter, either through ADR or through enforcement. Response at 3.

18 On February 15, 2011, after learning of the complaint, ACSS filed five FEC Form 9,  
19 "24-Hour Notice of Disbursements/ Obligations for Electioneering Communications" disclosing

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<sup>2</sup> In the original complaint notification sent to Respondent, OGC included a CD-ROM that was supposed to contain a copy of the complaint's exhibit. However, the CD was blank. We therefore sent another copy to the Respondent and granted additional time to respond to the information contained in the exhibit. After reviewing the CD, Respondent submitted a letter indicating that it did "not wish to revise the substance" of its earlier response, but it did acknowledge that there were insufficiencies in the disclaimers contained in the advertisements from the exhibit. March 10, 2011 Response at 1.

1 donations received and disbursements made in connection with the electioneering  
2 communications. The information contained in those reports follows:

3 Date of	Candidate/	Total	Total
4 Public Distribution	Purpose	Donations	Disbursements
09/03/2010	Lois Capps "Health Care Risk"	\$15,000	\$13,638.90
10/8/2010	David Cicilline "Worst Shape"	\$25,000	\$30,923.54
10/21/2010	Lois Capps "Constitution"	\$50,000	\$38,988.63
10/21/2010	David Cicilline "Meagan's Law" (Radio Advertisement)	\$0	\$9,112.35
10/26/2010	David Cicilline "Question"	\$75,000	\$28,770.80
	<b>Total:</b>	\$165,000	\$121,434.22

5  
6 **B. Legal Analysis**

7 **1. Electioneering Communication Reporting Requirements**

8 An electioneering communication is a "broadcast, cable or satellite communication"  
9 that: (1) refers to a clearly identified candidate for Federal office; (2) is made within 60 days  
10 before a general election or 30 days before a primary election; and (3) is targeted to the relevant  
11 electorate. 2 U.S.C. § 434(f)(3)(A)(i); 11 C.F.R. § 100.29(a). A clearly identified candidate  
12 means that the candidate's name, nickname, photograph or drawing appears, or the identity of  
13 the candidate is otherwise apparent through an unambiguous reference. 11 C.F.R.  
14 § 100.29(b)(2). A communication is "targeted to the relevant electorate" when it can be  
15 received by 50,000 or more persons in the district the candidate seeks to represent. 11 C.F.R.  
16 § 100.29(b)(5).

17 Under 2 U.S.C. § 434(f) and 11 C.F.R. § 104.20, every person who makes aggregate  
18 disbursements exceeding \$10,000 for the cost of producing and airing electioneering

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1 communications during any calendar year must, within 24 hours of each disclosure date,<sup>3</sup>  
2 disclose information regarding the communication. *Id.* This disclosure must include the  
3 identity of the person making the disbursement; the identity of any person sharing or exercising  
4 direction or control over the activities of such person; the amount and the identity of the  
5 recipient of each disbursement over \$200; and the names and addresses of contributors who  
6 give \$1,000 or more in the calendar year to the person making the disbursement. *Id.*

7       The Respondent acknowledges that the advertisements in question were electioneering  
8 communications. Response at 1. The advertisements clearly identify, by name and by  
9 photograph, federal candidates David Cicilline and Lois Capps. *See* 2 U.S.C. § 434(f)(3)(A)(i)  
10 and 11 C.F.R. § 100.29; attachment 1 (transcripts of ads). In addition, as reported by the  
11 Respondent, the ads were publicly distributed between September 3, 2010 and October 26,  
12 2010, within 60 days before the November 2, 2010, general election. *Id.* The complaint asserts  
13 that the Cicilline ads were broadcast in the congressional district where he was a candidate.  
14 Complaint at 1. Although we do not have specific information regarding the distribution of the  
15 ads, we can infer that the ads were targeted to the relevant electorate based on ACSS's  
16 admission that the ads were electioneering communications. *See* 2 U.S.C. § 434(f)(3)(A)(i) and

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<sup>3</sup> The disclosure date is defined as the first date on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of \$10,000; or any other date during the same calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of \$10,000 since the most recent disclosure date during such calendar year. 11 C.F.R. § 104.20(a)(i) and (ii).

1 11 C.F.R. § 100.29. Finally, it does not appear that any exemptions from the definition of  
2 electioneering communication at 11 C.F.R. § 100.29(c) apply in this matter.<sup>4</sup> *Id.*

3 Therefore, the advertisements in question are electioneering communications, and the  
4 Respondent was subject to the electioneering communication reporting requirements.

5 Therefore, Respondent violated the reporting requirements of the Act by failing to file the  
6 required notices within 24 hours of each disclosure date. Accordingly, we recommend that the  
7 Commission find reason to believe that the Respondent violated 2 U.S.C. § 434(f).

## 8 **2. Disclaimer Requirements**

9 The Act requires that when a political committee makes a disbursement for the purpose  
10 of financing an electioneering communication, the communication shall include a disclaimer  
11 that clearly states whether it was paid for or authorized by a candidate or a candidate's  
12 authorized political committee. 2 U.S.C. § 441d(a)(1) and 11 C.F.R. § 110.11(a)(4) and (b). If  
13 the communication is not paid for or authorized by a candidate or the candidate's authorized  
14 political committee, the disclaimer must clearly state the full name and permanent address,  
15 telephone number, or World Wide Web address of the person who paid for the communication,  
16 and a statement that it is not authorized by any candidate or candidate's committee. *Id.* If the  
17 communication is transmitted through television, the disclaimer must be transmitted via written  
18 and audio statement. 2 U.S.C. § 441d(d) and 11 C.F.R. § 110.11(c)(4). In order to be clearly  
19 readable, the written statement must be greater than four percent of the vertical picture height

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<sup>4</sup> The following communications are exempt from the definition of electioneering communication. Any communication that: (1) Is publicly disseminated through a means of communication other than a broadcast, cable, or satellite television or radio station; (2) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station; (3) Constitutes an expenditure or independent expenditure provided that the expenditure or independent expenditure is required to be reported under the Act or the Commission's regulations; (4) Constitutes a candidate debate or forum conducted pursuant to 11 C.F.R. § 110.13, or that solely promotes such a debate or forum; and (5) Is paid for by a candidate for State or local office in connection with an election to State or local office, provided that the communication does not promote, support, attack, or oppose any Federal candidate.

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1 and must be visible for at least four seconds. *Id.* Finally, the audio statement must be conveyed  
2 with an unobscured full-screen view of a representative from the political committee. *Id.*

3 The disclaimers for the Cicilline and Capps communications in question contain an  
4 audio statement declaring that ACSS is responsible for the content of the ads, and the television  
5 ads also contain a written statement indicating that no candidate or candidate's committee  
6 authorized the ads and provide the World Wide Web address for ACSS. However, the audio  
7 component of the television ads fails to state, along with an unobscured full-screen view of a  
8 representative from the ACSS, that the ads were not authorized by any candidate or any  
9 candidate's authorized committee. 11 C.F.R. § 110.11(a)(4) and (b). In addition, the radio  
10 advertisement concerning Congressman Cicilline omits ACSS's address, or website name, and a  
11 statement that no candidate or authorized committee paid for the communication. Accordingly,  
12 due to these omissions, we recommend that the Commission find reason to believe that the  
13 Respondent violated 2 U.S.C. § 441d by failing to include proper disclaimers in the  
14 communications.

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IV. RECOMMENDATIONS

1. Find reason to believe that Americans for Common Sense Solutions violated 2 U.S.C. §§ 434(f) and 441d;
- 2.
3. Approve the attached Factual and Legal Analysis;
- 4.
5. Approve the appropriate letters.

Christopher Hughey  
Acting General Counsel

Date: 6-30-11

By: K. M. Guith  
Kathleen M. Guith  
Acting Associate General Counsel for  
Enforcement

Peter G. Blumberg  
Peter G. Blumberg  
Assistant General Counsel

Wanda D. Brown  
Wanda D. Brown  
Attorney

Attachments:

1. Transcripts of Advertisements

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### **Cicilline Megan's Law Radio Advertisement – Complaint Exhibit**

Her name was Megan and she was 7 years old. She lived in a town in NJ very much like Portsmouth or East Providence. One day Megan was kidnapped, brutally raped and killed by someone who was a repeat sex offender, who lived across the street from her home. Out of this tragedy Megan's law was passed so that sex offenders would have to register where they live and people would know who lived in their neighborhoods. Even though republicans and democrats fight about almost everything, they didn't fight about this, except David Cicilline. As a state representative, David Cicilline argued against Megan's Law and voted against mandatory registration of sex offenders. We don't know why David Cicilline took a position to protect sexual predators and we don't know if he will argue or vote against other common sense legislation if he becomes a congressman. These are two good questions. David Cicilline should answer them, and he should answer them now then we can determine if he's a common sense solution for congress. Americans for Common Sense Solutions is responsible for the content of this advertising.

### **Cicilline Television Advertisement – Complaint Exhibit**

<b>On Screen</b>	<b>Voiceover</b>
A snapshot of a piece of paper with text from "Megan's Law" and a photograph of Cicilline over the page. In the bottom right hand corner, the text "The Providence Journal, May 1, 1996"	After arguing against Megan's law
Photo of a section of the legislation	in the general assembly
Photo of the section of the legislation requiring registration of sexual offenders	After voting against mandatory registration of convicted sex offenders
Photo of Cicilline	After taking an illegal pay raise when his city was strapped for cash
Buildings with leases on them, pot holes in the street	After leaving Providence in the worst shape its been in since the Great Depression.
A picture of Cicilline with questions marks	The big question here is.
Picture of Cicilline with the caption "Is David Cicilline really the common sense solution for our problems in Washington?"	Is David Cicilline really the common sense solution for our problems in Washington?
Text – Paid for by Americans for Common Sense Solutions. <a href="http://www.americansforcommonsensesolutions.org">www.americansforcommonsensesolutions.org</a> Americans for Common Sense Solutions is responsible for the contents of this advertising. Not authorized by any candidate or candidate's committee.	Americans for Common Sense Solutions is responsible for the content of this advertising.

**Lois Capps – Advertisement #1 – Transcribed from Advertisement Posted on Facebook**

<b>On Screen</b>	<b>Voiceover</b>
A chart about the new health care system.	To Washington this is healthcare reform. To the rest of us it's a big mess.
Santa Barbara News-Press, Thursday July 8, 2010 "Lois Capps takes heat on healthcare Cottage Hospital physicians told plan is a 'big gamble'"	Even Congresswoman Lois Capps, who voted for the health care reform bill says it's not the best bill, but they had to pass something when they could.
Picture of a man and the words across appearing with bullets "pay higher taxes" and "have less choice"	Is that common sense? So we can all pay higher taxes. So we can have less choice. Washington calls it reform,
Picture of the capital and these words at the bottom of the frame. Paid for by Americans for Common Sense Solutions. <a href="http://www.americansforcommonsensesolutions.org">www.americansforcommonsensesolutions.org</a> Americans for Common Sense Solutions is responsible for the contents of this advertising. Not authorized by any candidate or candidate's	but even Lois Capps thinks it's a big risk. Tell her it's not a common sense solution. Americans for Common Sense Solutions is responsible for the content of this advertising."

**Lois Capps – Advertisement #2 – Transcribed from Advertisement Posted on Facebook**

<b>On Screen</b>	<b>Voiceover</b>
A chart about the new health care system. These words flash across "Millions of jobs?", "Healthcare easier?", "Reduce deficit by billions?"	"Congresswoman Lois Capps says that healthcare reform will create millions of jobs. She says it will make health care easier and reduce the deficit by billions. Does that make any sense to you? If so, maybe this will change your mind.
It appears this is an event/forum at a church and a man is at a podium.	Where in the constitution of the United States does it allow the government to change the way health care is now run.
Lois Capps is sitting at a table with 2 other people. This sentence appears at the bottom of this frame. "It does say in the constitution <i>health</i> , liberty and happiness?"	It does say in the constitution health, liberty and happiness.
These words are at the bottom of the frame: Paid for by Americans for Common Sense Solutions. <a href="http://www.americansforcommonsensesolutions.org">www.americansforcommonsensesolutions.org</a> Americans for Common Sense Solutions is	What? It's time for some common sense. Americans for Common Sense Solutions is responsible for the content of this advertising."

responsible for the contents of this advertising.  
Not authorized by any candidate or candidate's  
committee.

**David Cicilline – Advertisement Transcribed from Facebook**

<b>On Screen</b>	<b>Voiceover</b>
David Cicilline standing at a podium during a campaign debate on October 19, 2010.	David Cicilline: There is no question that the individuals for parts of this administration and work that I have done have completely restored the public's confidence and integrity of city government.
Picture of Cicilline with a question mark across his face and then the words....Question: Why are city reserves at a record low? Why is the city's pension system short 25 million? Why did the city auditor say Providence is running out of money?	Lady: Here's a question: Why are city reserves at a record low? Why is the city's pension system short \$25 million? Why did the city auditor say Providence is running out of money?
David Cicilline standing at a podium during a campaign debate on October 19, 2010.	David Cicilline: There is no question....
Picture of Cicilline with a question mark across his face and then the words....Question: Is David Cicilline a common sense solution to our problems in Washington.	Lady: Here's a question: Is David Cicilline a common sense solution to our problems in Washington.
These words are at the bottom of the frame: Paid for by Americans for Common Sense Solutions. <a href="http://www.americansforcommonsensesolutions.org">www.americansforcommonsensesolutions.org</a> Americans for Common Sense Solutions is responsible for the contents of this advertising. Not authorized by any candidate or candidate's committee.	Americans for Common Sense Solutions is responsible for the contents of this advertising.